

# WETLANDS COUNCIL

## MINUTES

October 9, 2018

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The Wetlands Council met on Tuesday, October 9, 2018 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger, Bob Wolff, and Gretchen Young

**Absentee:** None

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:06 a.m. with introductions and a quorum present. The schedule for the meeting was addressed.

1. **Approval of Minutes**

- ***Councilor Lievens made a motion to approve the September 11, 2018 meeting minutes as corrected, second by Councilor Mellor. Motion passed unanimously.***

2. **Public Input:** None

4. **New Business**

Commissioner Scott gave an overview of the vacant Water Division Director's position which Assistant Director Rene Pelletier has been doing the work of. He noted 2 hurdles to filling the position: 1) salary 2) PE requirement. He would like to include within HB2 to lift the PE requirement for the position for more flexibility. The Council looks to be supportive with this.

The Auditors are expecting to report out in December to the joint committee at the legislature. The majority of the observations have not been seen yet. There will be an opportunity to respond, to concur or correct. The Commissioner and the Council Chair will be then indicating the positive things the Division is doing and that the areas we don't concur will be watched.

Wetlands rules are out for formal rule making and public hearings will be held. This is a lengthy process.

Delegation is being considered of the National Pollutant Discharge Elimination System (NPDES) program and would require 5 positions to start perform background and legal work, if not EPA doesn't have the time for assistance. Legislature will have to approve the funding. Often NPDES permits are litigated. If we take delegation the Council may have to take some of the responsibility.

Standard Operating Procedures (SOPs) were discussed for financial disclosures of members and administrative support. Two SOPs were drafted for the support. The financial disclosure forms will be passed out at the December meeting to be in place by the January meeting. The financial disclosures will be collected here at DES, copied, and then submitted to the Secretary of State. The Commissioner's assistant will check the website to make sure they are listed.

The Commissioner asked if the council would like him to come yearly or more often. It was decided yearly was sufficient but he would be represented by the Water Division Director or Bureau Administrator and have it noted in minutes that "the administrator was representing the Commissioner at the meeting".

Other items mentioned:

A more formalized process is being prepared for the response to remands from the Supreme Court.

LSR deadline date is not set yet.

Revised statutes – when the legislature revises a statute, it doesn't get posted online immediately on the RSAs. The department does keep track and Rene will send out the ones that do involve us on 482-A and 482-B.

Perceived conflict of interest in relevant areas.

Also the SOPs for the Council Clerk and Appeals Clerk.

Administrative rules were discussed. The Wetlands Council is committed to updating our rules after audit. The changes we make will be shared with the other councils. Legal assistance and rule writing will be given as appropriate. There is not enough support from the Attorney General's Office. The Civil Division does have help for rule writing.

Comments and questions were addressed to the Commissioner.

**3. Status of Appeals**

Paula Scott reviewed the following:

**I. New Appeals**

**Docket No. 18-11 WtC – Stephen Silk Family Trust Appeal**

Subject 07/10/18 Denial of Wetlands Permit, File #2018-01276

Hearing Officer: Not Assigned

Status: August 6, 2018 received Petition for Appeal. 8/8/18 issued Insufficient Appeal letter. 8/22/18 received Revised Petition for Appeal. 8/24/18 issued Receipt of Revised Appeal letter. Appeal is still insufficient. Council denied Appeal at September 11, 2018 meeting. 9/12/18 issued ruling dismissing Acceptance of Appeal. October 4, 2018 received Request for Reconsideration which will be addressed at the November meeting.

**II. Decisions that need to be written/finalized and issued.**

**Docket No. 17-16 WtC – Bryan and Linda Corr Appeal**

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9<sup>th</sup> meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. March 14, 2018 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8<sup>th</sup> at 9 a.m. 3/28/18 received Assented-To Motion to Continue Deadlines. April 2, 2018 issued letter granting Assented-To Motion to Continue Deadlines. 4/11/18 issued Order granting in part and denying in part State's Motion to Dismiss. 4/30/18 received State's Witness and Exhibit List. May 2, 2018 received Appellants' Witness and Exhibit List. 5/8/18 Hearing was held and Deliberations are scheduled for today, June 12, 2018. 5/25/18 received State's Proposed Findings of Fact and Conclusions of Law. 5/29/18 received Appellant's Requests for Finding and Rulings. Deliberations were held June 12, 2018. August 6, 2018 issued Decision and Order granting Petition for Appeal. September 4, 2018 received State's Motion for Reconsideration. 9/10/18 received Objection to State's Motion for Reconsideration.

**Docket No. 17-13 WtC – Kelly Connolly, et al Appeal**

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey

Hearing Officer: February 26, 2018 David Conley was appointed by AG

Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10/27/17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration. 3/26/18 received Appellants' Witness and Exhibit Lists. 3/30/18 issued Ruling Denying Permittees' Motion for Rehearing and Reconsideration. April 2, 2018 issued Pre-hearing Order scheduling hearing for August 14, 2018 at 9 a.m. 4/6/18 received Permittees' Witness and Exhibit Lists. 4/30/18 received Appearance of Atty. Brooks. July 16, 2018 received Motion to Exclude Irrelevant and Immaterial Evidence. 7/24/2018 received Appellants' Objection to Motion to Exclude Irrelevant and Immaterial Evidence. August 6, 2018 issued letter granting Objection to Exclude Certain Evidence. 8/14/18 Hearing was held. 8/21/18 received Assented to Stipulation Regarding the Record. Deliberations are scheduled for today, 8/28/18 at 10:30 a.m. September 28, 2018 circulated draft Decision for review. October 3, 2018 issued Decision and Order on Petition for Appeal.

### **III. Hearings or PHCs Pending**

#### **Docket No. 17-10 WtC – Patricia A. Rose Appeal**

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer  
Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed. Request for status update to be sent. August 14, 2018 received a copy of letter from Appellant to Collis Adams. 8/23/18 issued letter giving Appellant 30 days to file a revised appeal. Discussion was held. September 20, 2018 received Revised Petition for Appeal. October 3, 2018 received motion for Summary Dismissal. Chairman Kimball noted that a Hearing Officer has already been named so he will handle the motion.

#### **Docket No. 18-03 WtC – New Castle Conservation Commission Appeal**

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough  
Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 2/20/18 issued Insufficient Appeal letter. March 21, 2018 received revised Petition for Appeal. 3/22/18 issued receipt of revised Appeal letter. April 10, 2018 received

Appearance of Jonathan Springer for the permittee and a Motion for Summary Dismissal. 4/13/18 received Appearance of Nathaniel Morse for the appellant. 4/16/18 received Appellant's Objection to Motion for Summary Dismissal. Council accepted Appeal May 8, 2018. 5/11/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 3 p.m. June 13, 2018 issued Pre-hearing Order scheduling hearing for January 8, 2019 at 9 a.m.

**Docket No. 18-05 WtC – David and Beth Boucher, Trustees Appeal**

Subject: 2/15/18 Administrative Order No. 18-004 WD

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 26, 2018 received Petition for Appeal and issued Insufficient Appeal letter. March 22, 2018 received Revised Petition for Appeal. 3/26/18 issued receipt of revised Appeal letter. Council accepted Appeal May 8, 2018. 5/11/18 issued Appeal accepted letter. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 1 p.m. 5/22/18 received Appearance of Joshua Harrison for the department. 5/31/18 received insufficiently filed Motion to Extend Pre-hearing Conference. 6/4/18 issued letter denying Motion to Extend PHC. June 13, 2018 issued Pre-hearing Order scheduling hearing for October 9, 2018 at 9 a.m. September 7, 2018 received Appellant's Witness an Exhibit List. 9/10/18 received State's Motion to Strike Exhibit and State's Witness and Exhibit List. September 14, 2018 issued Notice of Change in Hearing Start Time from 9 a.m. to 10 a.m. September 17, 2018 received Appellant's Modified Exhibit List.

**Docket No. 18-07 WtC – Kreisler Family II, LLC Appeal**

Subject: 3/7/18 Approval of Wetlands Permit #2017-03657 issued to David Brewster

Hearing Officer: September 10, 2018 David Conley was appointed by AG.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of appeal and denying Motion to Summarily Dismiss. September 18, 2018 issued Notice of Pre-hearing Conference scheduled for October 22, 2018 at 9 a.m. October 3, 2018 received Motion to Consolidate.

**Docket No. 18-08 WtC – Kreisler Family II, LLC Appeal**

Subject: 3/7/18 Approval of Wetlands Permit #2017-03659 issued to David Brewster

Hearing Officer: September 10, 2018 David Conley was appointed by AG.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of appeal and denying Motion to Summarily Dismiss. September 18, 2018 issued Notice of Pre-hearing Conference scheduled for October 22, 2018 at 9:30 a.m. October 3, 2018 received Motion to Consolidate.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**V. Misc.**

Chairman Kimball called for a break at 8:51. Return to meeting at 9:04.

Hearing Officer, Atty. David Conley, joined Chairman Kimball and the Council as the following was reviewed.

**Docket No. 17-16 WtC Bryan and Linda Corr Appeal**

Subject: State's Motion for Reconsideration and Objection to State's Motion for Reconsideration

This is a mixed question of fact and law. Council will defer to the Hearing Officer on questions of law. Atty. Conley noted Councilors Carbonneau, Prescott and St. Pierre were not here for hearing and they will not discuss or engage in the discussion.

The Hearing Officer reviewed the history of this appeal. Nonconforming/accessory structure is an issue along with a wording issue in the Order. The State raises 2 questions: 1) because they don't believe this issue of accessory/nonconforming was properly before the council; 2) the fact of the height issue was not ruled whether state was unreasonable or unlawful in deciding the where to measure.

It was decided issues can be addressed today and no additional testimony was needed at this time. Discussion of the height measurement was held.

- ***Councilor Gove made a motion the DES height methodology was unreasonable, second by Councilor Lievens. Motion passed with 6 ayes and 3 nays.***

Was the building justified under the shoreland rules or other rules? Was the structure made more conforming or less conforming as it was built? The Council considered what the parties should have done. Discussion was held.

- ***Councilor Gove made a motion to deny the Motion for Reconsideration and it goes back to the Bureau for further consideration, second by Councilor Mellor. Motion passed with 7 ayes and 2 nays.***

The Chairman and Hearing Officer will work together to write this ruling.

Concluded Reconsideration on the Corr Appeal at 9:45.

Meeting reconvened at 9:46.

Send audit comments to Chairman.

Regarding the ARM Fund discussion next month – the Chairman noted you should recuse yourself if you worked on an ARM project proposal or if your constituency was involved in several proposals; recusal was discussed. Wendy Weisiger noted she will not be here.

**6. Old Business**

**7. Next Meeting –**

The next meeting is November 13, 2018 at 9 a.m. with the ARM Fund presentation.

**8. Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting adjourned at 9:50 a.m.

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**WETLANDS COUNCIL**

**HEARING MINUTES**

**October 9, 2018**

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The Wetlands Council met for  
Docket No. 18-05 WtC – David and Beth Boucher, Trustees Appeal  
Tuesday, October 9, 2018 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Lee Carbonneau, James Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Wendy Weisiger, Robert Wolff and Gretchen Young.

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 10:15 a.m.

The Hearing record was closed at 2:20 p.m.

Deliberations were called to order at 2:20 p.m. and ended at 2:35 p.m.

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